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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSE RAMIREZ, LUIS GOMEZ, and
MARCK MENA ORTEGA on behalf of
themselves and all other persons similarly
situated,

Plaintiffs,

v.

GHILOTTI BROS, INC., a corporation; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO. 3:12-cv-04590

**DEFENDANT GHILOTTI BROS., INC.'S
EVIDENTIARY OBJECTIONS TO
DECLARATIONS SUBMITTED IN
SUPPORT OF MOTION FOR
CONDITIONAL CERTIFICATION**

Judge: Hon. Charles R. Breyer
Date: March 29, 2013
Time: 10:00 A.M.
Crtrm: 6, 17th Floor

1 **OBJECTIONS TO DECLARATION OF JOSE RAMIREZ:**

2 Ph. 5, Page 1, Lines 26-27: "When I started working for GBI, I realized that the company would not
3 pay me for time I spent performing Loading and Transport Duties."

4 **Basis:** "Best Evidence Rule;" FRE 1002: Plaintiff's job duties and remuneration therefor are
5 set forth in the Master Laborer's Agreement ("MLA.")

6 **Basis:** Lack of Personal Knowledge; FRE 602: Ramirez has established no base of
7 knowledge and no evidence thereof, regarding the duties for which he would and would not receive
8 compensation.

9 **Basis:** Prior Inconsistent Statement Under Oath; FRE 613: Ramirez testified at deposition
10 that he was paid for travel time.

11 Ph. 9, Page 3, Lines 5-7: "There have always been twenty (20) to twenty-five (25) laborers at a
12 given time who drive trucks for GBI, and who must perform work before and after their official
13 shifts. In general, my experience is that all foremen at the company require some laborers on their
14 crews to perform Loading and Transport Duties before and after their official shifts.

15 **Basis:** Lack of Personal Knowledge; FRE 602: Ramirez has established no base of
16 knowledge and no evidence thereof, regarding the number of employees performing particular
17 duties.

18 Ph. 11, Page 3, Lines 18-21: "GBI does not pay me for the many hours I spend performing Loading
19 and Transport Duties. The pay stubs GBI gives me only show the hours I spend working at a job
20 site during my official shift, as defined by the company dispatcher. They do not include payment
21 for the time that I spend on Loading and Transport Duties before and after my official eight (8) hour
22 shift."

23 **Basis:** "Best Evidence Rule;" FRE 1002: Employees' pay records and the records of the GBI
24 dispatch system are determinative of whether employees were in fact paid for all the time for which
25 they were expected to work. The "requirements" as to Plaintiff's work and remuneration are set
26 forth in the MLA.

27 Ph. 11, Page 3, Lines 21-25: "Before my injury in 2011, I only received payment for my loading
28 and transport Duties for one day, but that was a special job that was several hours away from the

1 Jacoby Street Loading Area, and my foreman told me he was doing me a special favor by paying
2 me for those hours."

3 **Basis:** Prior Inconsistent Statement Under Oath; FRE 613: Ramirez did not testify as to any
4 of the alleged circumstances making this incident unique under oath at deposition.

5 **Basis:** Impermissible Hearsay; FRE 801(c): Statement by other than declarant (Ramirez) to
6 establish the truth of the matter asserted, that is, that payment for travel time was a "special favor."
7 Ph. 12, Page 3, Lines 26-28: "Except when I was on light duty, my paystubs from GBI frequently
8 show that I worked forty (40) hours or less in a week when I actually worked more than forty (40)
9 hours that week because of my Loading and Transport Duties."

10 **Basis:** "Best Evidence Rule;" FRE 1002: Employees' pay records and the records of the GBI
11 dispatch system are determinative of whether employees were in fact paid for all the time for which
12 they were expected to work. The tasks for which Plaintiff works and is paid are set forth in the
13 MLA.

14 Ph. 13, Page 4, Lines 7-14: "I believe that GBI has a company-wide policy not to pay laborers for
15 Loading and Transport Duties... It does not matter which foreman or supervisor is overseeing the
16 work at the particular job site. I do not know of any laborers who have been paid for this work.

17 **Basis:** Lack of Personal Knowledge; FRE 602: Lepe has established no base of knowledge
18 and no evidence thereof, regarding any policy by GBI or any payment or lack of payment to any
19 other laborers.

20 **OBJECTIONS TO DECLARATION OF LUIS GOMEZ:**

21 Ph. 7, Page 2, Lines 20-22: "In addition to the information provided on the GBI dispatch system, at
22 times, a foreman will inform me the day before what supplies and equipment are needed at the
23 construction site the next day."

24 **Basis:** Impermissible Hearsay; FRE 801(c): Statement by other than declarant (Gomez) to
25 establish the truth of the matter asserted, that is, that certain supplies and equipment might be
26 required at a construction site and/or that Gomez must bring them.

27 Ph. 8, Page 2, Line 23: "None of the Loading and Transport Duties is Paid by GBI."

28 **Basis:** "Best Evidence Rule;" FRE 1002: Plaintiff's pay records are determinative of whether

1 Plaintiff was in fact paid for time he claims to have worked; his job duties and remuneration
2 therefor are set forth in the MLA.

3 Ph. 8, Page 2, Lines 23-24: "I am expected to perform these duties for free."

4 **Basis:** Impermissible Hearsay; FRE 801(c): Statement by other than declarant (Gomez) to
5 establish the truth of the matter asserted, that is, that someone unnamed expects him to work for
6 free.

7 **Basis:** "Best Evidence Rule;" FRE 1002: The "expectations" as to Plaintiff's work and
8 remuneration are set forth in the MLA.

9 Ph. 8, Page 2, Lines 24-26: "The pay stubs I receive from GBI do not accurately show the number
10 of hours that I work. Instead, the pay stubs show only the hours that I spend at the construction
11 site.."

12 **Basis:** "Best Evidence Rule;" FRE 1002: Plaintiff's pay records and the records of the GBI
13 dispatch system are determinative of whether Plaintiff was in fact paid for all the time for which he
14 was expected to work.

15 Ph. 9, Page 3, Lines 4-5: "These materials do not arrive by themselves; laborers like me drive the
16 supplies and equipment to the sites, without compensation by GBI."

17 **Basis:** Lack of Personal Knowledge; FRE 602: Gomez has established no base of
18 knowledge and no evidence thereof, regarding the compensation provided to other employees for
19 duties performed.

20 **Basis:** "Best Evidence Rule;" FRE 1002: Employees' pay records and the records of the GBI
21 dispatch system are determinative of whether employees were in fact paid for all the time for which
22 they were expected to work.

23 **Basis:** Prior Inconsistent Statement Under Oath; FRE 613: Plaintiff testified at deposition
24 that he was permitted to leave sites early in order to mitigate travel-related time.

25 Ph. 9, Page 3, Lines 5-7: "I estimate that there are, on any given day, approximately twenty (20) to
26 twenty-five (25) laborers whose job duties include Loading and Transport Duties.

27 **Basis:** Lack of Personal Knowledge; FRE 602: Gomez has established no base of
28 knowledge and no evidence thereof, regarding the number of employees performing these duties.

1 Ph. 9, Page 3, Lines 8-9: "The practice of not paying for these duties has been the same no matter
2 what foreman I have been assigned to work with."

3 **Basis:** Lack of Personal Knowledge; FRE 602: Gomez has established no base of
4 knowledge and no evidence thereof, regarding any practice by GBI.

5 **Basis:** Prior Inconsistent Statement Under Oath; FRE 613: Plaintiff testified at deposition
6 that he was permitted to leave sites early in order to mitigate travel-related time.

7 Ph. 10, Page 3, Lines 13-14: "GBI then resumed its practice of not paying laborers for the Loading
8 and Transport duties."

9 **Basis:** Lack of Personal Knowledge; FRE 602: Gomez has established no base of
10 knowledge and no evidence thereof, regarding any practice by GBI.

11 Ph. 11, Page 3, Lines 23-25: "Despite this, no one ever responded to my complaint and I was
12 required to continue performing the Loading and Transport Duties without pay."

13 **Basis:** "Best Evidence Rule;" FRE 1002: Employees' pay records and the records of the GBI
14 dispatch system are determinative of whether employees were in fact paid for all the time for which
15 they were expected to work. The "requirements" as to Plaintiff's work and remuneration are set
16 forth in the MLA.

17 **Basis:** Prior Inconsistent Statement Under Oath; FRE 613: Plaintiff testified at deposition
18 that he was permitted to leave sites early in order to mitigate travel-related time.

19 Ph. 12, Page 3, Lines 26-28; Page 4 Lines 1-2: "In 2008, I told a foreman, Rob White, that I was not
20 being paid for the Loading and Transport Duties. Rob White responded "[i]f you don't do
21 what I ask you to do, tomorrow you will stay at home... Mr. White again repeated, "[i]f you don't
22 do what I want you to do, tomorrow you will stay at home."

23 **Basis:** Impermissible Hearsay; FRE 801(c): Statement by other than declarant (Gomez) to
24 establish the truth of the matter asserted, that is, that if Gomez did not work for free, he would not
25 be permitted to work.

26 Ph. 12, Page 4, Lines 2-3: "I was not paid for the Loading and Transport Duties, and was required to
27 continue performing those duties."

28 **Basis:** "Best Evidence Rule;" FRE 1002: Employees' pay records and the records of the GBI

1 dispatch system are determinative of whether employees were in fact paid for all the time for which
 2 they were expected to work. The "requirements" as to Plaintiff's work and remuneration are set
 3 forth in the MLA.

4 **OBJECTIONS TO DECLARATION OF MARCK MENA ORTEGA:**

5 Ph. 5, Page 1, Lines 24-27; Page 2, Lines 1-2: "I arrived at the Jacoby Street Loading Area at the
 6 start time given by the dispatcher, and my supervisor yelled at me because I had not arrived early
 7 enough to load the truck and drive it to the job site by the official shift start time. From then on, I
 8 knew that I was expected to arrive at the loading area early enough to load the truck and drive it to
 9 the job site by the time my shift was officially scheduled to start."

10 **Basis:** Impermissible Hearsay; FRE 801(c): Statement by other than declarant (Ortega) to
 11 establish the truth of the matter asserted, that is, that he was required to arrive early enough to load
 12 the truck and drive to the site by the start time.

13 **Basis:** "Best Evidence Rule;" FRE 1002: The "expectations" as to Plaintiff's work and duties
 14 are set forth in the MLA.

15 Ph. 11, Page 3, Lines 19-20: "I do not receive pay for the many hours I spend performing Loading
 16 and Transport Duties."

17 **Basis:** "Best Evidence Rule;" FRE 1002: Employees' pay records and the records of the GBI
 18 dispatch system are determinative of whether employees were in fact paid for all the time for which
 19 they were expected to work.

20 Ph. 11, Page 3, Lines 23-25: "Often, the pay stubs given to me by GBI show that I worked less than
 21 forty (40) hours in a week when I actually worked more than forty (40) hours that week."

22 **Basis:** "Best Evidence Rule;" FRE 1002: Employees' pay records and the records of the GBI
 23 dispatch system are determinative of whether employees were in fact paid for all the time for which
 24 they were expected to work.

25 Ph. 11, Page 4, Lines 1-3: "For weeks when I was paid for forty (40) hours or less, but actually
 26 worked more than forty (40) hours because of my Loading and Transport Duties, I was not paid
 27 overtime.

28 **Basis:** "Best Evidence Rule;" FRE 1002: Employees' pay records and the records of the GBI

1 dispatch system are determinative of whether employees were in fact paid for all the time for which
2 they were expected to work.

3 Ph. 12, Page 4, Lines 4-6: "It is my understanding that GBI has a company-wide policy not to pay
4 laborers for the time they spend performing Loading and Transport Duties. It does not matter which
5 foreman or supervisor is overseeing the work at the particular job site.

6 **Basis:** Lack of Personal Knowledge; FRE 602: Plaintiff has established no base of
7 knowledge and no evidence thereof, regarding any policy by GBI.

8 Ph. 12, Page 4, Lines 10-12: "Since then, I have not been paid for any of the time I have spent
9 performing Loading and Transport Duties and I do not believe that other laborers have either."

10 **Basis:** "Best Evidence Rule;" FRE 1002: Employees' pay records and the records of the GBI
11 dispatch system are determinative of whether employees were in fact paid for all the time for which
12 they were expected to work.

13 **Basis:** Lack of Personal Knowledge; FRE 602: Plaintiff has established no base of
14 knowledge and no evidence thereof, whether others have been paid.

15 **OBJECTIONS TO DECLARATION OF KENNY DENT:**

16 Ph. 5, Page 2, Lines 5-8: I was not compensated for the work I performed prior to my official start
17 time. I was simply expected by GBI to work for free for that time period. I estimate that my off the
18 clock work occurred about ninety (90) percent of all the days I was assigned to work at GBI.

19 **Basis:** "Best Evidence Rule;" FRE 1002: Employees' pay records and the records of the GBI
20 dispatch system are determinative of whether employees were in fact paid for all the time for which
21 they were expected to work. The "expectations" as to Plaintiff's work and remuneration are set
22 forth in the MLA.

23 **Basis:** Impermissible Hearsay; FRE 801(c): Statement by other than declarant (Dent) to
24 establish the truth of the matter asserted, that is, that someone unnamed expects him to work for
25 free.

26 **Basis:** Lack of Personal Knowledge; FRE 602: No base of knowledge and no evidence
27 thereof, regarding the amount of off the clock work he allegedly did.

28 Ph. 7, Page 2, Lines 15-17: "I frequently was required to stop at the San Rafael dump to dump

1 debris, or at stores to pick up supplies. I was usually required to perform these duties either before
2 or after my official shift. I was generally not paid for this time."

3 **Basis:** "Best Evidence Rule;" FRE 1002: Employees' pay records and the records of the GBI
4 dispatch system are determinative of whether employees were in fact paid for all the time for which
5 they were expected to work. The "requirements" as to Plaintiff's work and remuneration are set
6 forth in the MLA.

7 Ph. 8, Page 2, Lines 22-24: "The only time that I was paid for was the time I spent working at the
8 construction site, not for any of the work I performed for GBI before and after I left."

9 **Basis:** "Best Evidence Rule;" FRE 1002: Employees' pay records and the records of the GBI
10 dispatch system are determinative of whether employees were in fact paid for all the time for which
11 they were expected to work. The "requirements" as to Plaintiff's work and remuneration are set
12 forth in the MLA.

13 Ph. 9, Page 2, Lines 25-28: " I know that the other laborers who performed Loading and Transport
14 Duties as described above were also not getting paid by GBI for this work. It did not matter which
15 foreman or work crew the laborer was assigned. GBI had a company-wide policy of not paying for
16 this work."

17 **Basis:** "Best Evidence Rule;" FRE 1002: Employees' pay records and the records of the GBI
18 dispatch system are determinative of whether employees were in fact paid for all the time for which
19 they were expected to work.

20 **Basis:** Lack of Personal Knowledge; FRE 602: No base of knowledge and no evidence
21 thereof, whether others have been paid by GBI. No base of knowledge and no evidence thereof,
22 regarding any policy by GBI.

23 **Basis:** Impermissible Hearsay; FRE 801(c): Statement by other than declarant (Dent) to
24 establish the truth of the matter asserted, that is, that others were not getting paid.

25 Ph. 11, Page 3, Lines 7-12: "My pay stubs from GBI did not accurately reflect the hours that I
26 worked. The pay stubs did not include the hours that I was required to work prior to and after my
27 shift performing Loading and Transport Duties. When my Loading and Transport Duties brought
28 the total number of hours I worked to over forty hours in a week, but the company's records only

1 showed that I worked less than forty hours in a week, I was not paid overtime."

2 **Basis:** "Best Evidence Rule;" FRE 1002: Employees' pay records and the records of the GBI
3 dispatch system are determinative of whether employees were in fact paid for all the time for which
4 they were expected to work.

5 Ph. 12, Page 3, Lines 16-19: "Jon Coffee was discussing laborers not wanting to drive because it
6 was off the clock work. Jon Coffee stated that some drivers requested that time clocks be put in the
7 trucks. Mike Ghilotti stared at him and said no, that's not going to happen."

8 **Basis:** Impermissible Hearsay Within Hearsay; FRE 801(c): Statement by other than
9 declarant (Dent), and is a statement regarding someone else's statement, offered to establish the
10 truth of the matter asserted, that is, that laborers were not getting paid for driving trucks.

11 **OBJECTIONS TO DECLARATION OF ROBERT GARDNER HODGKINSON:**

12 Ph. 3, Page 1, Lines 20-21: "The dispatch system did not state the actual time my work day started,
13 but rather the time that I was expected to be at the construction site."

14 **Basis:** "Best Evidence Rule;" FRE 1002: The definition of a "work day" is set forth in the
15 MLA.

16 Ph. 6, Page 2, Lines 14-17: "I do not believe that GBI recorded the hours that I worked in the
17 morning prior to arriving at the construction site. Nor did GBI record the hours that I worked after I
18 left the construction site and transported the supplies and equipment back to the GBI yard and put
19 these materials away."

20 **Basis:** Lack of Personal Knowledge; FRE 602: No base of knowledge and no evidence
21 thereof, regarding whether he was paid.

22 Ph. 7, Page 2, Lines 18-19: "I was not paid by GBI for the approximately two to three hours a day
23 spent performing the duties of loading and unloading and transporting equipment and supplies. In
24 weeks where the company recorded that I worked forty (40) hours or less but in fact I worked more
25 than forty (40) hours due to my Loading and Transport Duties, GBI did not pay me overtime."

26 **Basis:** "Best Evidence Rule;" FRE 1002: Employees' pay records and the records of the GBI
27 dispatch system are determinative of whether employees were in fact paid for all the time for which
28 they were expected to work. The "requirements" as to Plaintiff's work and remuneration are set

1 forth in the MLA.

2 Ph. 10, Page 3, Lines 17-19: "By not including this additional, unpaid work performed by its
3 Laborers when preparing the budgets for projects, GBI was able to underbid other competitors for
4 construction projects."

5 **Basis:** Lack of Personal Knowledge; FRE 602: No base of knowledge or evidence of
6 knowledge as to how GBI calculated bids for projects, and what the amount of GBI's bids may have
7 been for any particular project.

8 **Basis:** "Best Evidence Rule;" FRE 1002: GBI's estimates, proposals and bids are
9 determinative of how GBI estimated labor costs and calculated and submitted bids.

10 Ph. 11, Page 3, Lines 20-25: "Mike Ghilotti was quite candid about the fact that GBI did not pay for
11 Loading and Transport Duties performed by laborers. On more than one occasion, I heard him tell
12 laborers that if they didn't want to get in a truck and load it, they should go somewhere else and he
13 could get other workers to take their place. Laborers who refused to perform Loading and
14 Transport duties would often find that they were not scheduled to work until they agreed to perform
15 those duties, which were unpaid."

16 **Basis:** Impermissible Hearsay; FRE 801(c): Statement by other than declarant(Hodgkinson),
17 and is offered to establish the truth of the matter asserted, that is, that GBI did not pay laborers for
18 driving trucks and enforced such a policy through scheduling.

19 **Basis:** Lack of Personal Knowledge; FRE 602: No base of knowledge and no evidence
20 thereof, regarding how and why employees were scheduled to work, and/or how and whether they
21 were paid.

22 Ph. 12, Page 4, Lines 4-10: I once asked Ben Barrios... why I had not been scheduled to work. Mr.
23 Barrios told me that when I was ready to start driving trucks again without a problem I would be put
24 back on a work schedule. He also told me he had 'ten other guys' that would be willing to do the
25 Transport and Loading Duties without complaint. I understood that if I kept complaining and
26 demanding that I be paid for all of the work I performed, I would be out of a job."

27 **Basis:** Impermissible Hearsay; FRE 801(c): Statement by other than declarant(Hodgkinson),
28 and is offered to establish the truth of the matter asserted, that is, that GBI did not pay laborers for

1 driving trucks and enforced such a policy through scheduling.

2 **Basis:** Lack of Personal Knowledge; FRE 602: No base of knowledge and no evidence
3 thereof, regarding his employment status.

4 **Basis:** "Best Evidence Rule;" FRE 1002: The procedures for resolving disputes are set forth
5 in the MLA.

6 **OBJECTIONS TO DECLARATION OF CHRISTOPHER JOSEPH LESSARD:**

7 Ph. 10, Page 3, Lines 10-14: "It does not matter who the foreman or supervisor is for the job site; all
8 foremen require some laborers they oversee to perform this work."

9 **Basis:** Lack of Personal Knowledge; FRE 602: No base of knowledge and no evidence
10 thereof, regarding the policies of all GBI foremen.

11 Ph. 11, Page 3, Lines 16-18: "I have not received payment for many hours of work I performed for
12 GBI. I regularly perform Loading and Transport Duties before and after my official shift but am
13 not paid for this time."

14 **Basis:** "Best Evidence Rule;" FRE 1002: Employees' pay records and the records of the GBI
15 dispatch system are determinative of whether employees were in fact paid for all the time for which
16 they were expected to work.

17 **Basis:** "Best Evidence Rule;" FRE 1002: The duties which Plaintiff performs and his
18 remuneration therefor are set forth in the MLA.

19 Ph. 12, Page 4, Lines 3-6: "It is my understanding that GBI has a company-wide policy not to pay
20 laborers for the time they spend performing Loading and Transport Duties. It does not matter which
21 foreman or supervisor is overseeing the work at the particular job site. I do not know of any
22 laborers who have been paid for this work.

23 **Basis:** Lack of Personal Knowledge; FRE 602: Lessard has established no base of
24 knowledge and no evidence thereof, regarding any policy by GBI or any payment or lack of
25 payment to any other laborers.

26 **OBJECTIONS TO DECLARATION OF PEDRO LEPE:**

27 Ph. 5, Page 1, Lines 25-28; Page 2, Lines 1-5: "Before I started driving trucks for GBI in 2008, I
28 learned that driving laborers were not paid for their Loading and Transport Duties. At that time, I

1 observed that the laborers who drove trucks for the company were required to arrive at the Jacoby
 2 Street Loading Area significantly before their original start times, so that they could perform their
 3 Loading and Transport Duties and still arrive at the job site by the start time provided by the
 4 company's dispatch system. I observed several of these driving laborers get yelled at by their
 5 foremen for arriving late at the job site because they had not built in enough time before their
 6 official shifts began to perform their Loading and Transport Duties."

7 **Basis:** Impermissible Hearsay; FRE 801(c): Statement by other than declarant(Lepe), and is
 8 offered to establish the truth of the matter asserted, that is, that GBI disciplined laborers for failing
 9 to account for loading/transport time.

10 **Basis:** Lack of Personal Knowledge; FRE 602: No base of knowledge and no evidence
 11 thereof, regarding any requirements set forth by GBI before his employment, no evidence of any
 12 knowledge of the GBI dispatch system as it existed before his employment, and/or with regard to
 13 any alleged "requirement" that existed before his employment.

14 Ph. 11, Page 3, Lines 21-23: "GBI does not pay me for the many hours I spend performing Loading
 15 and Transport Duties. The pay stubs GBI gives me only show the hours I spend working at a job
 16 site during my official shift, as defined by the company dispatcher. They do not include payment
 17 for the time that I spend on Loading and Transport Duties before and after my official eight (8) hour
 18 shift."

19 **Basis:** "Best Evidence Rule;" FRE 1002: Employees' pay records and the records of the GBI
 20 dispatch system are determinative of whether employees were in fact paid.

21 **Basis:** "Best Evidence Rule;" FRE 1002: The "requirements" as to Plaintiff's work and
 22 remuneration are set forth in the MLA.

23 Ph. 12, Page 4, Lines 6-9: "It is my understanding that GBI has a company-wide policy not to pay
 24 laborers for the time they spend performing Loading and Transport Duties. It does not matter which
 25 foreman or supervisor is overseeing the work at the particular job site. I do not know of any
 26 laborers who have been paid for this work.

27 **Basis:** Lack of Personal Knowledge; FRE 602: No base of knowledge and no evidence
 28 thereof, regarding any policy by GBI or any payment or lack of payment to any other laborers.